THE HONOURABLE SRI JUSTICE
ASHUTOSH MOHUNTA

W.P.No.28993 of 2011

Date of Order: 19-01-2012

Between:

Bhupati Hotels Ltd.

..Petitioner

and

1. Allahabad Bank and others

..Respondents

The Court made the following Order:

THE HONOURABLE SRI JUSTICE
ASHUTOSH MOHUNTA

W.P.No.28993 of 2011

Oral order:

The petitioner, who is carrying on hotel business, availed certain term loans and overdraft facility from M/s.Karnataka Bank initially. Thereafter, the 1st respondent—Allahabad Bank had sanctioned term loan and overdraft facility by reducing the liabilities with M/s.Karnataka Bank under the Multiple Banking Arrangement. Pursuant to the said arrangement, the 1st respondent—Allahabad Bank had taken over the term loans of the petitioner from M/s.Karnataka Bank and in that regard M/s.Karnataka Bank issued "*No Objection Certificate*" (NOC) and ceded the first paripassu charge in favour of the 1st respondent—Allahabad Bank on the assets of the petitioner.

It is averred that as per the arrangement of taking over of the terms loans from M/s.Karnataka Bank, the 1st respondent—Allahabad Bank had sanctioned term loans and overdraft facility to the petitioner, who in turn promptly paid the instalments. Thereafter, the business of the petitioner took a down turn due to unfavourable market conditions and it could not pay the loan instalments. So, the 3rd respondent issued demand notice dated 13-06-2011. For which the petitioner submitted a detailed representation seeking re-schedule of the loan accounts. But, the 3rd respondent instead of considering the request of the petitioner issued "*Notice of Recall*" dated

22-09-2011, calling upon the petitioner to pay the entire outstanding amounts on or before 30-09-2011. To which the petitioner had submitted a detailed reply, explaining the circumstances for the default in payment of the instalments and requested for re-structuring of the loan account by providing fresh repayment schedule. The said request was rejected by the 3rd respondent vide letter dated 08-10-2011 stating that the units maintained by the petitioner group are not having viability and as such the restructuring of the loan could not be taken up. Thereafter, the petitioner made another representation dated 10-10-2011 to the 3rd respondent requesting the latter to provide time for regularizing the account, which was rejected on 13-10-2011. Hence, the writ petition.

The respondents have filed a detailed counter wherein it has been averred about the petitioner availing term loans and failed to pay the instalments. It is also averred that as per the norms prescribed by the Reserve Bank of India (RBI), the 1st respondent—Bank is bound to classify an account as a Non-Performing Asset (NPA) in case the borrower fails to pay the instalments within 90 days when the instalment becomes due or fail to pay interest or service the interest or there are no operations in the account or the limits is not renewed and for non-renewal of accounts within six months form its due date. The petitioner failed to pay the instalments of term loans on the due dates and also failed to pay the liability in overdraft facility within a period of one year from the date of sanction; therefore, the 3rd respondent was constrained to classify the petitioner's account as NPA. As per the terms of the term loan agreement, if the petitioner fails to pay instalments, the respondent—Allahabad Bank in its discretion may recall the entire outstanding amount in the said term loan account. It is

also averred that only financially viable units would be considered for restructuring and the same was intimated by the respondent—bank to the petitioner vide letter dated 08-10-2011. It has been further averred that the petitioner account is a technically NPA account as on the date of recall and the account is due for review/renewal on 10-02-2011 by which date the company should submit their renewal proposal with financial statements to the bank. On receipt of the same, the bank would be in a position to assess the various financial ratios that were projected in the loan application/sanction have been achieved or not. The petitioner did not submit any such renewal proposal and financial statements within time to consider the request for restructuring of the limits, apart from defaulting the loan repayments. As per RBI guidelines, if account is not renewed within six months of due date, the account to be classified as NPA. As the petitioner failed to operate the account as per the terms of the loan agreement, the respondent—bank issued a recall notice demanding for payment of the amount.

Learned counsel for the petitioner submits that the guidelines issued by the Reserve Bank of India for restructuring of loans, financial viability should be determined by the banks based on parameters such as Return on Capital Employed, Debt Service, Coverage Ratio, Gap between the Internal Rate of Return and Cost of Funds etc. and the respondent—bank ought not to have perfunctorily rejected the request of the petitioner for restructuring/rescheduling its loan accounts without undertaking an objective exercise to determine the financial viability of the petitioner unit. The 3rd respondent issued the Notice of Recall, recalling the entire loan accounts of the petitioner, in a hasty and mechanical manner without application of mind. As per clause 30 of the terms and conditions of sanction letter, the respondent—Allahabad

Bank is empowered to suitably review/amend the terms and conditions of the transactions of a borrower as per the prevalent economic and financial scenario.

Learned standing counsel for the respondents submits that the petitioner having taken three term loans by accepting terms and conditions and failed to pay the instalments cannot, now, contend that the respondent—bank abruptly issued the Notice of Recall. As per the RBI guidelines, only financially viable units can be considered for restructuring. As the petitioner failed to establish financial viability and there is no certainty of repayment, the request of the petitioner for restructuring of loan accounts was rejected.

Admittedly, the petitioner availed the term loans from the 1st respondent—bank, but failed to pay the instalments.

As the petitioner failed to pay the instalments and adjust the liability in overdraft account, the 3rd respondent was constrained to classify the account as NPA as per the norms prescribed by RBI. As the petitioner unit is not financially viable, as per the guidelines of RBI, its (petitioner) request for restructuring the loan accounts was rightly rejected by the respondents. In view of the same, the petitioner does not have any legally enforceable right to seek a direction to the respondents to restructure its loan accounts.

In view of the above, the writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

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ASHUTOSH MOHUNTA, J.

19-01-2012

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